

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-06-2015

Coram

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A.No.1265 of 2006

Kuppusamy

.. Appellant/Defendant

v.

Subramaniam

.. Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 C.P.C against the judgment and decree dated 10.4.2006 made in A.S.No.66 of 2004 on the file of the I Additional District Judge, Salem reversing judgment and decree dated 24.2.2004 made in O.S.No.56 of 2003 on the file of the Sub Court, Sankari.

Appellant : Mr.G.Arul Murugan

Respondent : Mr.P.Valliappan

J U D G M E N T

The unsuccessful defendant is the appellant herein. The Second Appeal is arising out of the judgment and decree of the Lower Appellate Court, thereby decreeing the money suit in O.S.No.56/2003 on the file of the Sub court, Sankari, in favour of the plaintiff.

2.The respondent/plaintiff filed the suit for recovery of Rs.1,52,850/- representing the principal of Rs.1,00,000/- and interest of Rs.52,850/- with subsequent interest on Rs.1,00,000/- at Rs.1.50 per hundred per month from the date of suit till date of realisation. The case of the plaintiff is that the defendant borrowed a sum of Rs.1,00,000/- on 21.5.2000 from the plaintiff on executing a pro note agreeing to repay the sum with interest at 18% p.a. In spite of repeated demands, the defendant failed to repay the amount either towards principal or towards interest or both. Hence, a legal notice dated 13.9.2002 was issued by the plaintiff to the defendant and the same was replied on 17.9.2002 by the defendant with false allegations, by denying the suit loan transaction and by denying his liability to make any payment.

3.The defence raised in the reply notice and in the written statement by the defendant is total denial of the suit loan

transaction and execution of pro note. It is through out the case of the defendant that the plaintiff conducted unauthorised chit in the village and the defendant was one of the 10 members in the chit group of Rs.1,00,000/- with annual subscription of Rs.10,000/- for 10 years. The defendant was the highest bidder of 5th year of the chit and at the time of receiving the chit amount, the defendant signed in the blank pro note for security purpose and there was no consideration for suit pro note and the suit blank pro note was fabricated into suit pro note due to pathway dispute between the plaintiff and his son.

4.Both the plaintiff and defendant have in support of their respective contentions, examined themselves and their witnesses as PW1 and PW2 and DW1 to DW3. Exs.A1 to A8 documents were marked on the plaintiff side and no documentary evidence was adduced on the side of the defendant. One memo dated 11.6.2003 was marked as Ex.C1 court exhibit.

5.The trial court on the basis of the evidence adduced before the same, believed the oral evidence of DW2 Gopal and DW3 Palanisamy in support of the chit transaction theory espoused by the defendant and discharged the defendant from adducing rebuttal evidence and shifted the burden to the plaintiff to establish his case that consideration was passed for Ex.A1 and on the failure of the plaintiff to prove his case and disprove the case of the defendant that the suit pro note was not supported by any consideration, disbelieved the plaintiffs case and accordingly, dismissed the suit.

6. Aggrieved against the same, the plaintiff filed AS.66/2004. During the pendency of the appeal, certified copies of the charge sheet and FIR in C.C.No.67/2004 on the file of the Chief Judicial Magistrate, Salem and settlement deed executed by the wife of the plaintiff in favour of the plaintiff were received and marked as Exs.B1 to B3 on the side of the defendant. The lower appellate court on the basis of the same oral and documentary evidence adduced before the trial court and additional evidence adduced before the same, rejected the defence theory raised on the side of the defendant and reversed the findings of the trial court by disbelieving the oral evidence of DW2 Gopal, who initially worked as Village Munsif and later on elected as Union Chairman of Edapadi Panchayat Union and DW3 Palanisamy who is an Ex.MP. Further, the lower appellate court was not inclined to take into consideration Exs.B1 and B2 as the same came into existence during the pendency of the suit. The lower appellate court by doing so, accepted the plaintiff's case and allowed the appeal, thereby decreeing the money suit in favour of the plaintiff. Hence, this second appeal by the defendant before this court.

7.The second appeal is admitted on the following substantial questions of law:

1.Whether the appellate court is right in decreeing the suit when the defendant has rebutted the presumption under Section 118 of the Negotiable Instruments Act and established by evidence that no consideration has been passed as per Ex.A1?

2.Whether Ex.A1 is a valid instrument as per the Negotiable Instruments Act to maintain a suit, when the same is not supported by consideration?

3.Whether the appellate court is right in drawing adverse inference and reversing the judgment and decree of the trial court when the plaintiff has failed to prove his case but the defendant has rebutted the presumption by evidence?

8.Heard the rival submissions made on both sides and perused the records.

9.The defendant, who suffered money decree in the hands of the lower appellate court has questioned the correctness of the same in this second appeal, mainly on the ground that the defendant has successfully rebutted the presumption drawn under section 118 of the Negotiable Instruments Act and adduced sufficient evidence to establish his case regarding the circumstances under which his signature was obtained in blank pro note for security purpose and regarding want of consideration for Ex.A1 and inspite of the same, the lower appellate court has not shifted the burden on the plaintiff to prove his case and erred in accepting the plaintiff case in the absence of any evidence to prove the suit borrowal and pro note in the manner as claimed by the plaintiff.

10.It is true that in the present case, as the defendant, admitted his signature in Ex.A1 pro note, the presumption under section 118 of Negotiable Instruments Act is automatically raised to the effect that the suit pro note was executed on the date and for the sum mentioned in the same. Once such presumption is raised, the initial burden is on the defendant to rebut such presumption either by adducing evidence independently or by relying on the evidence adduced on the side of the plaintiff. While doing so, the standard of proof required to be adduced by the defendant is not one beyond reasonable doubt, but preponderance of probability. Once the burden cast on the defendant stands discharged, the same shifts to the plaintiff to prove his case.

11. In the present case, the liability cast on the defendant got discharged once the evidence adduced on his side raised a reasonable doubt in the mind of the court about the plaintiff's case regarding the execution of Ex.A1 pro note. The defendant has in order to disprove the execution of Ex.A1 in the manner as produced before the court, examined himself as DW1 and his witnesses Gopal and Palanisamy as DW2 and DW3. According to the defendant, the plaintiff and others belong to the same village and the plaintiff organised and conducted unauthorised chit in the village and the defendant and others become the members of the same and the annual subscription was Rs.10,000/- per year for 10 years and the defendant became the successful bidder during 5th year and his signature was obtained in the blank pro note by way of security for due repayment of balance chit amount and thereafter the defendant paid entire yearly subscription and witnesses also paid the yearly installments, but even thereafter, the plaintiff failed to return the document and failed to repay the amount to others and the same compelled DW2 Gopal to lodge a police complaint etc. The defendant has, in support of his case so put forth herein, examined DW2 Gopal and DW3 Palanisamy. DW2 was then Village Munsif and DW3 was Ex-MP. The trial court, by placing reliance on the evidence of DW2 and DW3 witnesses, believed their version and accepted the defendant's case and dismissed the suit. Whereas, the lower appellate court by attaching more importance to the status of DW2 and DW3 arrived at the conclusion that they having regard to their status would not have been the members of chit transaction and would not have agreed to sign in the blank pro note and on the basis of the same, rejected the defendant's theory and allowed the appeal, thereby decreeing the money suit in favour of the plaintiff. Such course adopted by the lower appellate court, according to the learned counsel for the defendant, is contrary to law and against well laid down legal principle and is hence legally sustainable. This Court is inclined to accept the contention so raised on the side of the defendant/appellant herein for the following reasons.

12. As already stated above, the nature of proof required to be adduced on the side of the defendant is not strict, but such to raise doubt about the plaintiff's case. The defendant has raised the doubt regarding chit transaction not for the first time in the written statement but in the earliest document i.e., in his reply notice. Ex.A4 reply notice contains all the particulars regarding the total chit amount, annual subscription, number of persons involved in the transaction, their names, the year during which he became the successful bidder etc. The same particulars are reiterated in the written statement filed by the defendant as well as in the witness box as DW1. The same is also supported by his witnesses DW2 and DW3 who are co-members in the chit transaction. As a matter of fact, DW2 Gopal has also lodged a police complaint for the alleged failure of the plaintiff to repay the amount paid by way of chit installments by him and others. The complaint also contains similar theory as raised

by the defendant and the same was duly registered as FIR and the same was investigated into and charge sheet was filed and the same was taken cognizance as CC.No.67/2004 by the Chief Judicial Magistrate, Salem. The certified copies of the charge sheet and FIR were received as Exs.B1 and B2 additional evidence on the defendant's side. Though there are minor discrepancies in the evidence of the defendant side witnesses, the consistent stand taken by the defendant throughout would probabalise the defendant's theory and the defendant thus discharged the liability cast on him in adducing evidence under section 118 of the Negotiable Instruments Act. Whereas the trial court without duly considering the legal requirement and the standard of proof required to be adduced by the defendant, disbelieved his version. Such course adopted by the lower appellate court as rightly argued by the learned counsel for the appellant is legally unsustainable. As the defendant discharged his burden, the same then shifts to the plaintiff to prove his case. Though the plaintiff examined one Mani as PW2 in his capacity as scribe of Ex.A1 pro note, the evidence of PW2 who is the sister's son of the plaintiff being interested one, ought not to have been weighed and accepted casually. His evidence, as rightly pointed out does not improve the case of the plaintiff.

13.Further, the plaintiff has not adduced any evidence to prove the source of funds. Exs.A5 to A8 documents produced on his side are only kist receipts and patta and the same are not sufficient enough to prove his case that he had during relevant point of time surplus means to lend huge amount of Rs.1,00,000/- to the defendant and the plaintiff failed to prove that material aspect.

14. Thus, in my considered view, the trial court has rightly found that the passing of consideration under Ex.A1 was not proved by the plaintiff and rightly dismissed the suit. Whereas, the lower appellate court on erroneous approach of the entire facts of the case, reversed the findings of the trial court and the judgment and decree of the lower appellate court hence warrants serious interference by this court and the substantial questions of law are accordingly answered in favour of the defendant.

15.In the result, the second appeal is allowed, thereby setting aside the judgment and decree of the lower appellate court and by restoring the judgment and decree of the trial court. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

rk

To

1.The I Additional District Judge, Salem.

2.The Sub Judge, Sankari.

3.The Section Officer, V.R.Section, High Court, Madras

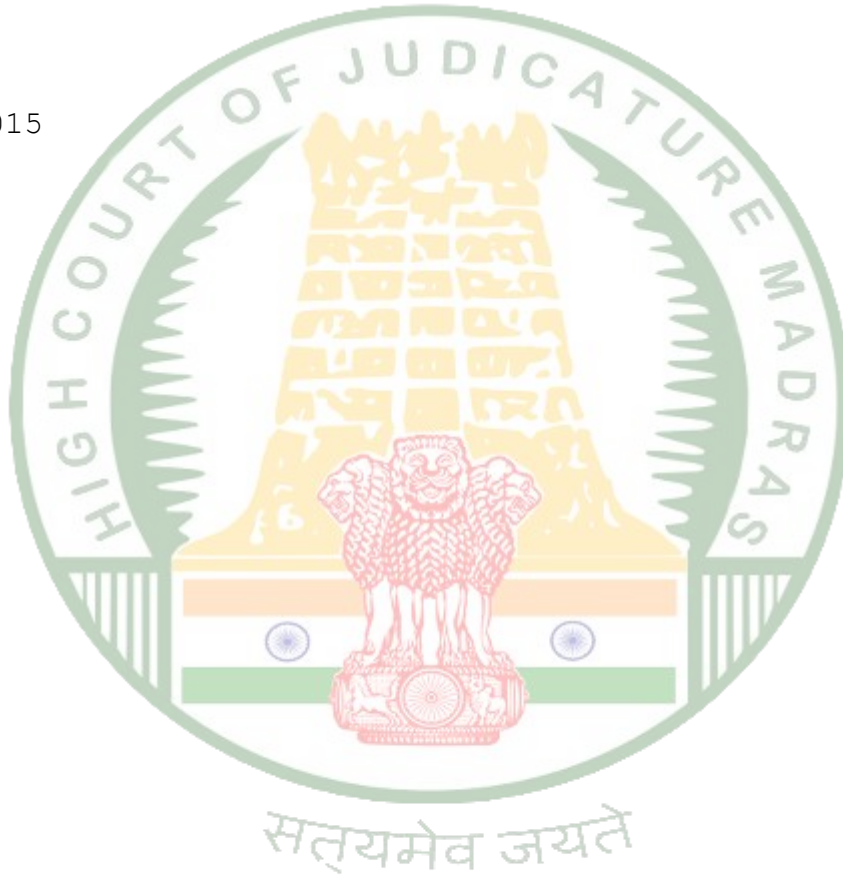
1 cc to Mr. P.Valliappan, Advocate Sr.No.29176

1 cc to Mr. G.Arul Murugan, Advocate Sr.No.29090

S.A.NO.1265 of 2006

tej(co)

pmk.4.9.2015



WEB COPY